Supreme Court, U.S.
FILED
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Case No, 93-545

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

JOHN LAZIRKO
Petitioner

vs

MARGUARITE BRICKMAN-ABEGGLEN
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF OHIO
CUYAHOGA COUNTY

PETITIONERS BRIEF - IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

JOHN LAZIRKO
Petitioner

5845 Amrap Drive
Parma Heights
Ohio, 44130

QUESTIONS PRESENTED

In the Retrial of Parma Municipal Court, Case No. 87-CV-1-1042, Judgement issued July 20 1989, the Court did deny Petitioner-Appellant the right due the Petitioner under PROCEDURAL LAW. The right to present evidence.

The Court of Appeals of Ohio Eighth Appellate District, Case No. 59775 Judgement issued January 23 1992, was so blatant with obvious, deliberate, errors that it also did abrogate the PROCEDURAL LAW.

PROCEDURAL LAW - Procedural Due Process - The guarantee of procedural fairness which flows from both the Fifth and Fourteenth Amendments Due Process clauses of the Constitution.

Are not these Judgement's subject to -

"Judgement is a 'VOID JUDGEMENT' if Court that rendered Judgement lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with Due Process."?

Klugh v. U.S. DCSC., 620 F. Supp 894,901

PARTIES TO THE PROCEEDING

1. MARGUARITE BRICKMAN-ABEGGLEN
4708 Marcie Drive
Cleveland, Ohio 44109

2. JUDGE KENNETH R. SPANAGEL
Parma Municipal Court
5759 West 54th Street
Parma, Ohio 44129

3. JUDGE LEO M. SPELLACY presiding
Judge P.J. Dyke concuring
Judge J. Nahra concuring

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
Cuyahoga County Court House
1 Lakeside Ave.
Cleveland, Ohio 44113-1085

4. THOMAS J. MOYER Chief Justice
SUPREME COURT OF OHIO
30 E. Broad Street
3rd Floor
Columbus, Ohio 43266-0419

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14,15,16,17, 18,19.	.	Parma Municipal Court Case No. 87-CV-1-1042
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TABLE OF AUTHORITIES

NATIONAL CONSTITUTION

1. Amendment V

2. Amendment XIV

CONSTITUTION OF
THE STATE OF OHIO

BILL OF RIGHTS

1. Article 1, Section 16

RE : LAWS & STATUTES

1. Klugh v. U.S. DCSC.,620 F.Supp 894, 901.

2. Graff v. Kelly, Okl. ~~771~~ 814 P.2d 489 (1991)

3. Pennsylvania Co v. Potter 233P. 700, 701, 108 Okl 49

CONSTITUTIONAL PROVISIONS
&
STATE OF OHIO PROVISIONS

At issue on this proceeding are:

1. Amendment V of the National Constitution of the United States, which provides in part --

No person shall be deprived of Life, Liberty, or Property, without Due Process of Law.

2. Amendment XIV of the National Constitution of the United States. Section 1, in total

SECTION 1. All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizen of the United States and of the State wherein they reside. No State shall make or enforce any Law which abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of Life, Liberty, or Property, without the Due Process of Law: nor deny to any person the Equal Protection of the Laws.

At issue, but not relevant here.
STATE OF OHIO CONSTITUTION
Article 1. Section 16.

LAW & STATUES

L. Klugh v. U.S. DCSC., 620 F.Supp 894, 901

"Judgement is a 'VOID JUDGEMENT' if Court that rendered Judgement lacked Jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with Due Process".

2. Graff v. Kelly, Okl., 771 P2d 489 (1991)

"VOID JUDGEMENT", such as may be vacated at any time, is one whose invalidity appears on face of Judgement Roll".

3. Pennsylvania Co. v. Potter, 233 P. 700, 701,108, Okl. 49

A "VOID JUDGEMENT" within the meaning of Rev. Laws 1910, -5274, 12 Okl.st Ann - 1038, is: "A Judgement which is voud upon its face and requires only an inspection of the Judgement Roll to demonatrate its want of validity".

OPINIONS BELOW

Landlord-Tenant dispute, within Territorial Jurisdiction of Parma Municipal Court.

April 14 1087 : Small Claims complaint filed by, sworn to, by Marguarite Brickman-Abegglen, Plaintiff-Appellee. Askin for $826.97

Countercomplaint filed ny John Lazirko Defendent-Appellant. Asking for $1109. in stolen property and damages

Oct. 30 1987 : Referee Recommendation , Plaintiff awarded $592.09.

Defendant filed Appeal, Parma Munical Court.

Dec. 27 1987 : Judge Georg W, Spanagel, Referee's Recomandation upheld.

Defendant-Appellant appeals to Ohio Court of appeals, Eighth District, Cuyahoga County.

April 11 1988 : Judgement issued, Ohio Court of Appeals. Case No. 55293. "REVERSED AND REMANDED". "This cause is reversed. Case remanded for new Trial.

Judge Blanche Krupansky
Presiding Judge

STATEMENT OF THE CASE

Landlord-Tenant dispute, within Territorial Jurisdiction of Parma Municipal Court. Case No. 87-CV-1-1042.

April 14 1987: Small Claims Complaint filed by Marguarite Brickman-Abegglen, asking for $826.97. Countercomplaint filed by John Lazirko, Defendent-Appellant. Asking for $1109, in stolen property and damages.

Oct. 30 1987: Referee's Recommendation filed. Appellee awarded $592.09. Appellant filed Appeal, Parma Municipal Court.

Dec. 27 1987: Judgement of Judge George W. Spanagel. Referee's Recommendation upheld. Appellant filed Appeal, Ohio Court of Appeals, Eighth District, County of Cuyahoga.

April 6 1989: Judgement issued, Ohio Court of Appeals, Eighth District, Case No. 55203. Judgement for Appellant. "REVERSED AND REMANDED". 'This cause

is reversed. Defendant's counterclaim is reinstated. Case remanded for new trial'. Judge Blanche Krupansky pre - siding.

June 13 1989: Retrial of Parma Municipal Court Case No. 87-CV-1-1042, Judge Kenneth R. Spanagel presided, held.

July 20 1989: Judgement of Retrial issued. Judgement for Appellee, $384.99 plus cost of Retrial and interest to Appellee from April 15 1987.

Aug. 2 1989: Appeal of Retrial of Parma Municipal Court Case No. 87-CV-1-1042, filed with Parma Municipal Court by Appellant, citing error's of Law and error's of fact. Rebutal was filed by Appellee. Parma Municipal Court never - repeat - never answered filed Appeal.

June 1 1990: Appeal filed with Ohio Court of Appeals, Eighth District, County of Cuyahoga. Oral hearing held, Jan. 11 1992. Case No. 59775, Judge Leo M. Spellacy presiding.

Jan. 23 1992: Judgement issued, Ohio Court of Appeals, Eighth District, Case No. 59775. The Judgement was NOT for Appellee, Judgement rendered was ' on the face ' for Judgement of Parma Municipal Court retrial Judgement, contaning Error's, Misquote's and an untrue Statement. -Judgement of Ohio Appeals Court, Eighth District, Case No. 59775, MODIFIED AND AS MODIFIED AFFIRMED, Judge in favor of Appellee for $350.14.

Mar. 5 1992: Notice of Appeal filed with Court of Common Pleas, Cuyahoga County. Upon advice of Court Attorney of Common Pleas Court, Appellant did begin addressing Appeal to the SUPREME COURT OF OHIO.

Sep. 25 1992: Appellant's Notice of Appeal to SUPREME COURT OF OHIO. Appellant's 'MEMORANDUM IN SUPPORT OF JURISDICTION' submitted Oct. 21 1992.

Jan. 27 1993: SUPREME COURT ENTRY issued.

SUPREME COURT OF OHIO, Case No. 92-2103. "Dismissed 'sua sponte' for reason that no substantial constitutional question exists therein". Thomas J. Moyer, Chief Justice.

Mar. 5 1993: Appellant filed 'MOTION FOR RECONSIDERATION' .

Mar. 24 1993: 'REHEARING ENTRY' DENIED, Thomas J. Moyer, Chief Justice

JURISDICTIONAL GROUNDS

UNITED STATES CODE
ANNOTATED

Title 28. 1257
(16)
SUPREME COURT JURISDICTION
Para. 5

A State Court Judgement, to be within Appellate Jurisdiction o United States Supreme Court, must nr "Final" in two senses: It must be to no further review or correction in any other State Tribunal, and must be an effective determination of the litigation and not of merely interlocutory or intermediate steps therein: Ir must be the final word of a final Court.

Market St. Ry. Co. v. Ry.Com. of State of Cal. Cal. 1945

Petitioner does also request a reading of Rule 10 (C), as listed in Rules of the Supreme Court of the United States.

Upon September 25 1992, Petitioner did file &Notice of Appeal' with the Supreme Court of Ohio. A one page notice, the last paragraph, in full, being - 'Both Case 's involved substantial Constitutional question's, under Article 1, Sec. 16 of the Constitution of Ohio and also under the 14 th Amendment of the Constitution of the United States.

APPENDIX

The Petitioner will attempt to present his case, that Parma Municipal Court, Case No. 87-CV-L-1042, and Ohio Court of Appeals, 8th Dist., Case No. 59775, in an orderly, short but accurate manner to this August Court. That both case's are subject to the rules of page 6 of this Brief. "Judgement, or Order, is 'VOID ON IT'S FACE' when invalidity is apparent upon inspection of Judgement Role".

With the Ohio Court of Appeals, 8th Dist. Case No. 55203 of ' REVERSED AND REMANDED ' of April 6 1989 in hand, Petitioner did attend the Retrial of cited Case No. 87-CV-1-1042 at Parma Municipal Court, June 13 1989. The begining of said Retrial was held in Chambers of Judge Kenneth R. Spanagel. Present were Judge Kenneth Spanagel, Defendant-Petitoner John Lazirko and Plaintiff-Respondant Alan Abegglen. Marguarite Brickman-Abegglen, sole sworn Plaintiff of record, was not present.

Mr. Abegglen addressed Judge Kenneth Spanagle and requested that the Plaintiff Case be dropped. Defendant John Lazirko stated that he did not want the Case dropped.

PARMA MUNICIPAL COURT
5750 West 54th Street
Parma, Ohio 44129

Case No. 87-CV-1-1042
Retrial
Judge presiding
Kenneth R. Spanagel

If the Court, in the Retrial of Case No. 87-CV-1-1042, did deliberatly deny the Petitioner the right to present any evidence inherent in all transcripts of previously held Court's of this cited Case, while permitting acting Appellee to change his testimony as stated in the previously cited Cases. Did not the said Court abrogate Petitioner's basic right's under the 14 Amendent of the National Constitution, denying Petitioner, deliberatly, a fair trial by "Due Process of Law".?

Parma Municipal Court, Case No. 87-CV-1-1042
June 13 1989

The Retrial had in attendance:

Judge Kenneth R. Spanagel -- Presiding
Baliff Edward Hudak
John Lazirko Petitioner
Alan Abegglen Respondant

The Retrial began--

Baliff Edward Hudak left the Court.

Court: Mr. Lazirko, are you an attorney?

Mr. Lazirko: No

Mr. Abegglen: My wife is not here, she is working, your Honor,

Court : OK

Court ; We have conditions and rules to follow here- (rullings, as stated by the Court being that no evidence or reference to any evidence presented at any previous trial of this Case, nor the Ohio Appeals Judgement or rulingwas admissable at this Retrial. Only new evidence was permitted.

NONE of the above statement's are in the Retrial Transcript. The truth that the above statement's were made is in the Retrial Transcript, where Mr. Lazirko is reminded of the Court's ruling seversl times.

(Sworn AFFIDAVIT attached)
exhibit A

As the Retrial progessed, it became clear to Petitioner, the rules were meant only for the Petitioner.

It appeared, many times, as though , with the power of the Court, the Court was the attorney for Mr. Abegglen.

Item : Transcript of cited Case.
Page 80 lines 1 thru 16

Mr. Abegglen : Mr. Lazirko is asserting that I stole window shades or removed them, to the best of my knowledge, we took down one window shade which was ripped and torn ---

Mr. Lazirko ; He's making a statement now. Let me read this to you. This is directly from the Transcript.

Court : Mr. Lazirko, we're not reading transcripts. We're asking questions in evidence, sir.

Mr. Lazirko ; Well, I'm asking if this is true.

Court : You want to ask him questions, You'll ask him --- lines 20 thru 23 ---- You want to ask him questions, fine.

Mr. Lazirko : I asked him the question and he refuses to answer.

Court : There was no Question, sir.

Mr. Lazirko ; The question was ; Did he remove all the curtain rod's?

Court ; We already have an answer to that. He said , No.

Mr. Lazirko ; All the window shades

Court : He answered that. Asked and answered. One window shade was --

Mr. Lazirko ; What was it ?

Court : --removed one which was ripped and torn.

Mr. Abegglen ; I believe that window was the one that ---

Mr. Lazirko ; I'm talking about all the window shades.

Court : It's been asked and answered Mr. Lazirko.

Mr. Lazirko : He hasn't answered it. Answered it.

Court ; His answer was he removed one window shade. Ask your next question.

Mr. Lazirko ; All right. All the traverse rods?

Mr. Abegglen ; No, I did not remove all traverse rods.

Note: The foregoing statements were in reference to - Referee's Transcript Page 52 Lines 1 thru 6.

Mr. Lazirko : "All the curtain rods, all the window shades, all the travers are gone. Only thing left were the closet shelves. Why did you take them?

Mr. Abegglen : "They're in the Garage.

Mr. Lazirko : "Pardon"

Mr. Abegglen : (to the Referee), Your Honor, they in the Garage. they're all in the Garage.

Mr. Lazirko states they have never been found

Retrial Transcript Parma Municipal Court
Case No. 87-CV-1-1042

Page 139 lines 10-11-12

Court : Okay. Now, as to your Case Mr. Lazirko, do you have any other evidence that you wish to Present -----

Page 140 lines3-4-5

Mr. Lazirko ; Then I am presenting this report known as ' REVERSED AND REMANDED '

Page 140 lines 6 thru 16

Court : Okay, well, that ------ it does not have to be entered as an exhibit, Okay?

Page 140 line 17

Mr. Lazirko ; Why not?

Page 140 lines 18-;9-20-21

Court ; Sir, I'm not going to discuss that with you. It does not have to be entered as an exhibit. We'll note ----

Page 140 lines 22-23

Mr. Lazirko ; You refuse to receive this as an exhibit?

Page 140 line 24-25
Page 1 thru 15

Court ; Sir, we have discussed in chambers, in the matter of ------

The foregoing statement's are in reference to:

Court of Appeals of Ohio
8 th Dist. Case No. 55203
Judgement issued April 6 1989

Judgement - REVERSED AND REMANDED

Page 5, Para. 1 (in total)

" In order to establish a valid contract there must be a meeting of the minds between the parties and an offer by one party and an acceptance by the other party.
Noroski v. Fallet (1982), 2 Ohio St. 3d 77,79
The judgement of the Trial Court was against the manifest weight of the evidence since plaintiffs failed to adduce any competent credible evidence going to all the elements necessary to create a contract between the parties."

Judge Blanche Krupansky
presiding

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
1 Lakeside Ave., Cleveland
Ohio. 44113-1085

Case No. 59775
Judge presiding
Leo M. Spellacy

Sp

Judges concuring
Judge P.J. Dyke
Judge J. Nahra

When 3 members of the Judiciary, with long experience, commit more than 3 errors of fact in one case (Case 59775), is there not cause to believe that there was a deliberatly planned effort to palce a predetermined Judgement into effect ?

Item: Court of Appeals of Ohio,
Eighth District
Case No. 59775
Journal Entry and Opinion
January 23, 1992 (issued)
Page 8, Para 3

State ex rel. Avellone v. Bd of Commrs of Lake City, (1989) 45 Ohio St., 3d 58 (1056.1 (1))

"A final judgement will not be disturbed (missing) unless a substantial right of a party is affected"

missing portion
"due to exclusion of evidence"

Page 8, Para 1
Lines 2,3,4,5,

Schartz v. Wells,
5 Ohio App. 3d 1 (1982)

As written in Judgement of C of A 8th Dist.
of Ohio . Case No. 59775

'Whether to admit a prior inconsistent statement which is pertinent to the credibility of a witness is a matter within the trial court's discretion.'

- - - - - - - - -

As written in N.E. Reporter, 2 nd series,
Volume 449 , Page 9

Schwartz v. Wells
5 Ohio App. 3d 1 , C of A
Warren County Jan. 6 1982

'Admissibility of evidence collateral to issue being tried and pertinent only with respect to credibility of a witness' testimony is a matter ordinarily within discretion of trial court .'

(Under lining by Petitioner)

Page 8, Para. 3.

Ferguson v. Owens (1985), 27 Ohio. 3d 155

"Error in the rejection of evidence is harmless error when rejection does not affect the substantial rights of the parties",

Petitioner does state - a CONTINUATION of an error is not 'harmless', error but a planned effort.

- - - - - -

Page 8, Para 4 (in total)
Page 9, First 2 lines

- Quote -

"In the instant case, the trial court judge had previously reviewed the findings of the referee and issued a judgement accordingly. Obviously, the trial court judge was well aware of what had transpired at the referee's hearing and was quite familiar with all parties and their respective testimonies. Thus, we conclude that it was harmless error for the trial court to prohibit appellant from referring to the transcript of the referee's hearing."

- Unquote -

The Judge who reviewed findings of Referee was:
Judge GEORGE W. SPANAGEL
Dec 21 1987

The Judge of Retrial of Case No. 87-CV-1-1042 was:
Judge Kenneth R. Spanagel
June 13 1989

(Exhibits attached) B, C

CONCLUSION

The Petitioner does believe Petitioner's effort's are short, concise and accurate . That these stated facts do present a fair case, fulfilling the requirements of ruling of ' Klugh v. U.S. DCSC., 620 F. Supp 874,901' " or acted in a manner inconsistent with Due Process ", of both cited Cases. - Parma Municipal Court No. 87-CV-1-1042 and Ohio Court of Appeals Court, 8 th Dist. Case No. 59775.

John Lazirko

Petitioner

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Case No. 87-CV-1-1042

PARMA MUNICIPAL COURT
Clerk of Courts
5750 West 54th Street
Parma, Ohio
44129

Case No. 87-CV-1-1042

OHIO APPEALS COURT
EIGHTH DISTRICT
Clerk of Courts
1 Lakeside Ave.
Cleveland, Ohio
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Case No. 59775

OHIO SUPREME COURT
Clerk of Courts
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43266 - 0419

Case No. 92-2103